



TOWN OF HERNDON

**P.O. BOX 427
HERNDON, VA 20172
(703) 435-6800**

**INVITATION FOR BID
(SEALED)**

IFB #16-09

DOWNTOWN PLANTER BED PROGRAM

DELIVER SEALED BIDS BY:

April 4, 2016 at 3:00 pm

Submit All Inquiries Concerning This Invitation For Bid
In Writing To

Charles J. Baker
Purchasing Agent

Town of Herndon
777 Lynn Street
P.O. Box 427
Herndon, VA 20172-0427

Fax Inquiries to:
(703) 435-8121 or
Email Inquiries to:

charles.baker@herndon-va.gov

**TOWN OF HERNDON
INVITATION FOR BIDS (IFB)
(SEALED)**

IFB Number: 16 - 09

Issue Date: March 16, 2016

Title: Downtown Planter Bed Program

Issuing Entity: Purchasing Agent
777 Lynn Street
Herndon, Virginia 20172-0427

Period of Contract: Commencing upon the execution of the contract. No renewal options are associated with this contract

Worksites: Downtown Planter Beds

If bids are mailed, send directly to the Issuing Entity shown above. If bids are hand delivered, deliver to: Front Counter; 777 Lynn Street, Herndon, Virginia. Direct all inquiries for information to Charles J. Baker, Purchasing Agent at (703) 435-6800 ext. 2048 or at the above listed email address.

*******FACSIMILES ARE NOT ACCEPTED*******

In compliance with this Invitation for Bids (IFB) and subject to all conditions imposed therein, the undersigned agrees to furnish the services at the prices indicated on the Bidder's Official Town Bid Form, pages 34 – 35.

Potential Bidders shall direct all questions or inquiries in writing **no later than March 25, 2016** to Charles J. Baker at 777 Lynn Street, Herndon, Virginia 20170 or charles.baker@herndon-va.gov. Revisions to the solicitation are made only by addendum issued by the Purchasing Office.

A public bid opening will occur at 777 Lynn Street, Herndon, Virginia 20170, Second Floor Room on April 5, 2016 at 10:30 am.

The Town will post the results of this bid opening and tabulations on its Procurement webpage, <http://www.herndon-va.gov/departments/finance/purchasing>, on the Commonwealth of Virginia Department of General Services' central electronic procurement website (eVA), <https://vendor.eprocgipdc.com/webapp/VSSAPPX/Advantage>, and on the Purchasing bulletin board prior to the official bid award.

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

INVITATION FOR BID

IFB # 16 - 09

DOWNTOWN PLANTER BED PROGRAM

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*** denotes – required included with bid**

I. PURPOSE:

The intent of this Invitation for Bid (IFB) is to establish a contract with a qualified and established firm to furnish all labor, materials, equipment and supervision necessary for planting of flowers in planters located in Downtown Herndon. The successful bidder will provide the appropriate materials, plants and labor to install various plants per the specifications on the plans for this project. The Contractor shall complete the work as shown on the drawings and as herein specified. The Town representative reserves the right to reject any plant material not meeting specifications. The Contractor should verify all quantities to his satisfaction prior to bid.

II. BACKGROUND:

The Town of Herndon is the third largest town in the Commonwealth of Virginia and home to more than 23,000 residents. Amidst a 21st century Northern Virginia landscape of high rise buildings, industrial complexes and transportation hubs, Herndon maintains a small town charm that is evident in its downtown, its neighborhoods and its commercial areas. Whether you are visiting for pleasure or business, you will enjoy the small town charm of this pre-Civil War town and the many attractions we offer. Packed with outstanding recreational activities, the award-winning Herndon Community Center offers many programs and events. Enjoy the town's 11 parks or take a hike on the W&OD Trail that runs through the heart of downtown Herndon. Or spend a day on the links at the Herndon Centennial Golf Course, named one of *Golf Digest's* "Places to Play."

III. CONTRACT PERIOD:

This contract will commence upon the date that the contract is fully executed and has no optional renewals. Automatic renewals are not permitted.

IV. INSTRUCTIONS TO BIDDERS

4.1 Competition Intended:

It is the Town's intent that this Invitation for Bid (IFB) permits competition. It is the Bidder's responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this IFB to a single source. The Purchasing Agent must receive such notification not later than five (5) business days prior to the date set for acceptance of bids.

4.2 Bidders Responsibility:

Bidders shall examine the scope of services, terms and conditions of this Invitation for Bid and shall exercise their own judgment as to the nature and total amount of all work required for acceptable performance. The Town cannot accept any plea of ignorance of conditions that exist or that may hereinafter exist, or of conditions or difficulties encountered in the work as a result of failure to make the necessary examination and investigation as an excuse for any failure or omission on the part of the Bidder to fulfill in every detail the requirements of this Invitation for Bid, or is acceptable as a basis for any claims whatsoever for extra compensation.

4.3 Conditions for Bidding:

A. Bid Forms: For consideration for selection, Bidder must submit a complete response to this solicitation. A complete response will consist of the return of the following documents:

1. One (1) original and one (1) copy of the completed Official Town of Herndon Bid Form;
2. One (1) original and one (1) copy of the References Form; and
3. One (1) original and one (1) copy of the Business, Professional and Occupational License

An authorized representative of the Bidder's firm shall sign the official Town of Herndon Bid Form and deliver it along with the firm's bid to the proper location by the time and date as specified on the cover page.

B. Envelope Identification: The Bidder shall return the signed bid in the self addressed envelope if provided. In the event the bid contains bulky subject material, firmly affix the mailing envelope provided to any other wrapper being used. The Town is not responsible for premature opening or late arrival of bids improperly addressed or identified. If a bid is mailed in an envelope, not as specified, the Bidder takes the risk that the Town may inadvertently open the envelope and the information compromised which may cause disqualification of the bid. The Town reserves the right to declare such a bid as non-responsive. The Bidder may hand deliver sealed bids to the designated location.

C. Late Bids: The Town will return bids received after the published time and date of acceptance to the Bidder unopened, if the IFB number and return address is shown on the envelope. In addition the Town will not accept hand-delivered bids that are presented after the published time and date of acceptance. The Town does not accept liability for late or non-receipt of bids.

D. Modification/Withdrawal of Bids:

1. A bidder for a Town contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in compilation of a bid, which unintentional arithmetic error or unintentional omission is clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid requested for withdrawal.

2. The bidder shall give notice in writing of his claim of right to modify or withdraw his bid within two (2) business days after the conclusion of the bid opening procedure.
3. A Bidder may not withdraw any bid under this paragraph when the result would award a contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).

4.4 License Requirement:

- A. The Town requires that all firms doing business in the Town have a license in accordance with the Town's "Business, Professional and Occupational Licensing" (BPOL) Tax Ordinance and to include the BPOL license number on the bid form. Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Direct all questions concerning the BPOL tax to the Finance Department, Revenue Office, telephone number (703) 435-6813.
- B. The signature on this solicitation certifies that the Contractor is properly licensed for providing the goods/services specified or will have the proper license prior to the awarding of the contract.
- C. All Contractors doing business in the Town are required to possess a valid Virginia Contractor's License as applicable.

4.5 Ethics in Public Contracting:

- A. The provisions contained in Sections 2.2-4367 of the Virginia Public Procurement Act as set forth in the Code of Virginia (1950), as amended, are applicable to all contracts solicited or entered into of Herndon. A Bidder may obtain a copy of these provisions from the Purchasing Office upon written request.
- B. By submitting their bids, all Bidders certify that their bids are made without collusion or fraud and they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

4.6 Criminal Sanctions:

The provisions referenced in Ethics in Public Contracting supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interest Act (§ 2.1-639.1 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the facts that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

4.7 Addenda:

The Town will issue all addenda by posting on the Procurement Bulletin Board located in the Herndon Municipal Center, on (eVA) Commonwealth of Virginia webpage and the Town's Procurement Webpage. All such addenda shall become a part of the solicitation documents in the bid and shall become a Contract Document. The Town accepts no liability for late bids or non-receipt of addenda.

4.8 Debarment Status:

By submitting a Bid and/or acceptance of a Town Purchase Order or Contract, all firms certify that they are not currently debarred from doing business with or in the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from doing business with or in the Commonwealth of Virginia.

4.9 Qualifications:

The Bidders shall provide the names, addresses and telephone numbers of at least three (3) other firms or government agencies for whom a similar type of work has been performed in the past twelve (12) months.

- A. The Town will consider, in determining the qualifications of a bidder, his record in performance of any contracts for the services into which he may have entered with the Town or with other public bodies or corporations; and, the Town expressly reserves the right to reject the bid of such bidder, if such record discloses that said bidder, in the opinion of the Town, has not properly performed such contracts or has habitually and without just cause neglected the payment of bills, or has otherwise disregarded his obligations to subcontractors, suppliers or employees.
- B. The Town will make an investigation as to the ability of the bidder to perform the work. The Town of Herndon reserves the right to reject any bid, if the evidence submitted by, or investigation of bidder, fails to satisfy the Town that such bidder is properly qualified by experience and financial status to carry out the obligations of the contract and to complete the work contemplated therein. The Town will not accept conditional bids.
- C. The Town reserves the right to inspect bidder's facility, prior to award, to satisfy questions regarding the bidder's capabilities.

4.10 Award Criteria:

- A. The Town will make an award to the lowest responsive and responsible bidder. The Bidder shall provide a Grand Total price for evaluation. The Bidder shall, also, provide unit prices, extensions, along with the grand total price. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, the Bidder shall clearly show such discount in the space provided. The Town will not consider discounts for prompt payment in making awards. The Town reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.

- B. Whenever the lowest responsive and responsible bidder is a resident of a state other than Virginia and such state under its laws allows a resident contractor of that state a percentage preference, the Town will allow a like preference to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. The Town will not consider a bid preference if the lowest bidder is a resident contractor of a state with an absolute preference.
- C. In order for bid consideration for award, the Bidder must provide all requested information on the Official Town Bid Form (i.e. Delivery, Terms, Bidder Name/Address/Phone No., Extended Price, Specifications Met, Signature, Printed Name and Date). Bidders should review the Official Town Bid Forms before submission to insure there are no omissions or blanks.
- D. A contract award is determined by using the (Grand Total) firm fixed unit price bid submitted for each job, as shown on the Official Town Bid Form that completely satisfies the specifications, terms and conditions of this invitation for bid. This (Grand Total) firm fixed unit price offered shall include all costs. No additional costs are allowed.
- E. Unless canceled or rejected, the Town will accept responsive bids as submitted from the most competitive responsible bidders, except that if the firm fixed price bids from the most competitive responsible bidders exceed available funds. The Procurement Official or designee, in such cases, may negotiate with the most competitive bidder to obtain a contract price within available funds.

V. SCOPE OF WORK

- 5.1 DESCRIPTION OF WORK: The Contractor shall furnish all labor, materials, equipment and services necessary for the provision, installation and guarantee of all plant material listed. The Contractor shall verify all quantities before purchasing plant material and shall report any discrepancies to the Town of Herndon.
- 5.2 QUALITY ASSURANCE:
 - A. All trees, shrubs and other plants shall conform to the most current edition of the "American Standard for Nursery Stock, ANSI-Z60.1 established by the American Association of Nurserymen, (AAN) and shall be sound, healthy, vigorous and free from insect pests, plant diseases and injuries.
 - B. Requirement for the measurement, branching, grading and quality of plants shall follow the code of standards currently recommended by the AAN.
 - C. Substitutions to plant material specified in the specie type or size are **not** permitted. **Exception:** a larger size of plant material may be substituted at no additional charge to the town.
 - D. A representative of the Town of Herndon may accompany the Contractor to the site of the nursery or nurseries to tag all material. The Contractor shall make all arrangements associated with such visits. Also, the Contractor shall notify the Town of Herndon one week prior to planting and shall make plants available for inspection at the site of the work prior to planting. The Town of Herndon is the

sole judge of the quality and acceptability of the plant materials both before or after planting and the Contractor shall immediately removed from the site all rejected materials and replaced with acceptable material at no additional cost to the Town of Herndon.

- E. The Town of Herndon shall receive a minimum notification of three days in advance of any planting to coordinate placement of plant material on site. The Contractor shall perform the actual layout and staking of individual trees, shrub, perennial, and other plant groupings in conjunction with the Town. The Town of Herndon reserves the right to place any and all plant material on site.
- F. The Contractor is required to certify the specific location where the trees, shrubs, and other plant materials were dug.
- G. The Contractor shall tag all plant material with the proper plant identification stating the scientific and common names.
- H. Cleanup of soil, branches, or other debris and litter resulting from any tree or shrub planting shall be promptly accomplished. The Contractor shall ensure that the work area is kept safe at all times until completion of the contract. Under no condition shall the accumulation of soil, branches or other debris be allowed upon public property in such a manner as to result in a public hazard or be unsightly.
- I. The Contractor is responsible for any damage to the site and existing plants caused by the Contractor.

5.3 SOIL WORKS AND AMENDMENTS:

- A. For all balled and burlapped, bare root, and container plantings, the Contractor shall ensure that backfill is of adequate structure, texture, and pH to support vigorous plant growth. The Town of Herndon will decide if the existing soil at each location is adequate to use in the backfill or if it is required to bring in soil. All backfill shall be added and tamped firmly but not excessively around the ball or root system at 12 inch increments until full. If it is required to bring in soil, a top quality top soil approved by the Town shall be used for backfilling.

5.4 PLANTING OPERATIONS:

- A. All plant material shall be freshly dug or containerized.
- B. Plants shall be packed, transported and handled with utmost care to insure adequate protection against injury. Plants shall be covered during transportation to protect from drying out.
- C. All plant material that cannot be planted immediately upon delivery shall be heeled in with moist soil or mulch and otherwise protected from the drying winds and sun. All plant material shall receive sufficient water until planted. The top of the rootball or container shall not be allowed to dry out before or after planting.
- D. Should problems arise in plant placement, the Town of Herndon shall be notified immediately and planting operations halted.

- E. Holes for individual plants shall be 1-2 times larger in diameter than the size of the container or rootball for shrubs, grasses, and perennials. Plant material shall be planted with 1/8 of the soil ball above finished grade. After plant material is in place, backfill with soil. Tamp soil to remove air pockets.
- F. Burlap on the rootball of B&B plants shall be pulled back and removed from the sides of the ball after setting in the hole. Remove 2/3 of wire baskets where present. All rootballs removed from containers shall be scarified on all sides. All nylon rope or wrap must be removed prior to planting.
- G. Do not prune plants before delivery. After planting, branches of deciduous trees may require pruning. The Contractor shall perform pruning only at the request of, as required by, the Town of Herndon.
- H. Anchoring, staking and/or guying for trees is required unless stated otherwise.
- I. All plants shall be thoroughly watered after planting.
- J. Planting operations shall be conducted under favorable weather conditions which are normal for such work as determined by accepted practice. The Town of Herndon shall be notified three working days prior to proposed planting dates and shall have full authority to decline changes or make changes to proposed planting dates. **Plantings shall be completed by May 20, 2016.** Planting after this date must be approved by the Town of Herndon.
- L. Plants shall be true to species and variety and shall conform to measurements specified except that plants larger than specified may be used if accepted and approved by the Town of Herndon. Use of larger plants shall not increase the contract price.

Note: For this specific IFB, tree removal, tree planting and tree maintenance is NOT part of this solicitation.

5.5 PLANTING INSTALLATION:

- A. All tree, shrub, and groundcover plantings shall be performed as detailed in these specifications.
- B. All trees, shrubs, perennials, and landscape beds shall be mulched at a depth of 3 inches. Mulch shall be fine shredded hardwood mulch and shall be applied per these specifications.

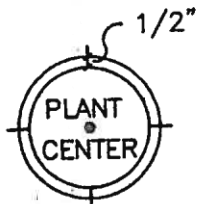
5.6 MAINTENANCE:

- A. All new plantings shall be protected and maintained by the Contractor until time of acceptance. Maintenance shall include watering, pruning, removal of dead plant material, resetting plants to proper grades or upright position and other necessary operations. Maintenance and protection of unplanted material from vandalism is the responsibility of the Contractor. Installed material subject to vandalism shall be the responsibility of the Town of Herndon.

- B. At the time of acceptance, the Contractor is relieved of routine maintenance responsibilities for the plantings.

5.7 PLANT GUARANTEE AND REPLACEMENTS:

- A. Upon completion of the work, the Contractor shall submit a request to the Town of Herndon for an inspection to determine if the work should be accepted. This request should only be made if all work has been completed and all plant material is in place and clearly healthy.
- B. After inspection, the Contractor will be notified by the Town of Herndon of acceptance of work, exclusive of possible replacements and deficiencies to the requirements of the contract. If necessary, a Punch list for Final Acceptance will accompany the letter of acceptance. Upon completion of the Punch list items, the Contractor shall request an inspection for Final Acceptance on all remaining items.
- C. All plants shall be guaranteed to be alive and healthy for one year from date of acceptance. Plant replacements shall be at no additional cost to the Town of Herndon and shall be done immediately unless the dead or unhealthy material can be directly attributable to lack of maintenance on the part of the Town of Herndon. Any plant missing due to the Contractor's negligence shall be replaced; however, the Contractor will not be responsible for plant material that has been damaged due to the vandalism, fire, theft or other activities beyond the Contractor's control.
- D. At the end of the guarantee period, an inspection will be made by the Town of Herndon upon written notice requesting such inspection submitted to the Town of Herndon by the Contractor. Unless and until this inspection is called for by the Contractor the plant guarantee shall remain in effect indefinitely.
- E. All replacements shall be plants of the same quality and kind as originally planted and shall be of size equal to that attained by adjacent plants of the same kind at the time the replacement is made. They shall be furnished and planted as specified, at the Contractor's expense. Only one replacement in conformance with the provision of this section will be required for each plant declared dead, or in an unhealthy or badly impaired condition at the time of final inspection as determined by the Town.



PLAN VIEW

CONTAINER RESTS VERTICALLY
SLICE OUTSIDE 1/2" OF
ROOTBALL TO PROHIBIT
CIRCULAR GROWTH OF
ROOTS.

1/8 OF ROOTBALL SHALL EXTEND
ABOVE FINISHED GRADE.

BALLED AND BURLAPPED SHRUBS

3" MIN. MULCH

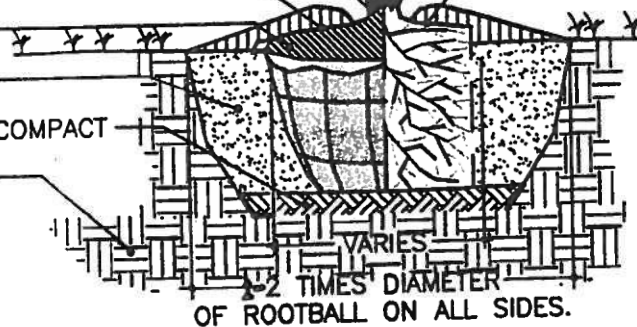
PREPARED PLANTING SOIL BACKFILL

SCARIFY TO 4" MIN. DEPTH AND RECOMPACT

EXISTING SUBGRADE



CONTAINER SHRUBS



PLANTING DETAIL

NOT TO SCALE

VI. TERMS AND CONDITIONS

(Vendor: The general rules and conditions that follow apply to all purchases and become a definite part of each formal solicitation and resulting Contract award issued by the Town of Herndon, unless otherwise specified. Bidders, Offerors, Contractors, Vendors or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, scope of work or specifications before submitting bids or proposals; failure to do so is, solely, at the Bidders', Offerors', Contractors' or Vendors' own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids or proposals on all solicitations issued by Town of Herndon will bind Bidders or Offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

- 1. AUTHORITY** – The Procurement Official has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, Contract and purchase order (except for capital construction projects) issued by the Town. In the discharge of these responsibilities, the Procurement Official may be assisted by assigned buyers. Unless specifically delegated by the Procurement Official, no other Town officer or employee is authorized to order supplies or services, enter into purchase negotiations or Contracts, or in any way obligate the government of the Town for indebtedness. Any purchase ordered or Contract made which is contrary to these provisions and authorities shall be of no effect and void and the Town shall not be bound thereby.

2. DEFINITIONS –

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the Town.

BEST VALUE: As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

BID: The offer of a Bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Procurement Official and offering to enter into Contracts with the Town. The term "Bidder" will be used throughout this document and shall be construed to mean "Offeror" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the Town.

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

INFORMALITY: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (Bidders) for their quotation on goods or services desired by the Town. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

PROFESSIONAL: Any type of professional service which is either: 1) performed by an independent Contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation and in conformance with the Purchasing Regulations, required but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of professional service required and at fair and reasonable compensation rather than by competitive sealed bidding.

PROCUREMENT OFFICIAL: The Procurement Official employed by the Town Council of the Town of Herndon.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective Offerors that will indicate the general terms which are sought to be procured from the Offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

RESPONSIBLE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the Contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.

RESPONSIVE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having submitted a bid which conforms in all material respects to the invitation for bid or request for proposal.

SERVICES: Any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

SOLICITATION: The process of notifying prospective Bidders that the Town wishes to receive bids on a set of requirements to provide goods or services. The notification of the Town requirements may consist of public advertising (newspaper, Town Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP) or telephone calls to prospective Bidders.

STATE: Commonwealth of Virginia.

CONDITIONS OF BIDDING/BID PREPARATIONS

- 3. CLARIFICATION OF TERMS** - If any prospective Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/Offeror should contact, **in writing**, the Chief of Revenue & Procurement **NO LATER THAN TEN (10) WORKING DAYS BEFORE** due date. Revisions to the solicitation are made only by addendum issued by the Purchasing Office. The Town reserves the right to answer the questions in writing, by voice telephone, or by fax and will supply the same information to all known prospective Bidders/Offerors.

4. **BID FORMS** – Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, to include the bid Cover Sheet and Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope provided with the solicitation. The item pages of the Pricing Schedule which do not include any items for which a bid is required need not be included in the submission of a bid. Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

5. **LATE BIDS & MODIFICATIONS OF BIDS** –

a. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. The time/date stamp clock located in the Purchasing Department shall serve as the official authority to determine lateness of any bid. A late bid/modification will not be considered for award except under the following conditions only:

1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the bid/modification; or
2. The bid/modification was sent by mail and it is determined by the Procurement Official that the late receipt was due solely to mishandling by the Town after receipt at the address specified in the solicitation.

b. If the Town declares administrative or liberal leave, scheduled bid openings or receipt of proposals will be extended to the next business day.

c. The time of receipt of bids at the specified location is the time-date stamp of such location on the bid wrapper or other documentary evidence of receipt maintained by the specified location.

d. Bids shall be received in the Purchasing Department from the hours of 7:30 – 4:30 Monday – Friday. The Town accepts no liability for late or non-receipt of bids. The Town will, also, not consider for award a late hand-carried bid, or any other late bid not submitted by mail.

6. **WITHDRAWAL OF BIDS** –

a. A Bidder for a public construction Contract, other than a Contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a Bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The Bidder shall give notice in writing to the Procurement Official of his or her claim of right to

withdraw his or her bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

b. A Bidder for a Contract other than for public construction may request withdrawal of his or her bid under the following circumstances:

1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the Procurement Official in writing.
2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the Procurement Official, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the Town may exercise its right of collection.

c. No bid may be withdrawn under this paragraph when the result would be the awarding of the Contract on another bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent.

d. If a bid is withdrawn under the Town of this paragraph, the lowest remaining bid shall be deemed to be the low bid.

e. No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

f. If the Town denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the Bidder in writing stating the reasons for its decision and award the Contract to such Bidder at the bid price, provided such Bidder is a responsible and responsive Bidder.

g. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.

7. **ERRORS IN BIDS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the Bidder. Carelessness in quoting prices or in preparation of bid otherwise, will not relieve the Bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the Bidder will be required to perform if his or her bid is accepted.

8. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE** – The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

Note 1. Addressed as indicated on page 1:
IFB/RFP Number
Title
Bid/Proposal due date and time
Vendor name and complete mailing address (return address)

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeror takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. **COMPLETENESS** – To be responsive, a bid must include all information required by the solicitation.
10. **ACCEPTANCE OF BIDS/PROPOSALS** – Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty (120) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.
11. **CONDITIONAL BIDS** – Conditional bids are subject to rejection in whole or in part.
12. **BIDS FOR ALL OR PART** – Unless otherwise specified by the Procurement Official or by the Bidder, the Procurement Official reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the Town. A Bidder may restrict his or her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the Bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
13. **TIME FOR RECEIVING BID** – Bids received prior to the time of opening are securely kept, unopened. The representative of the Procurement Official assigned to open them will decide when the specified time has arrived, and no bid received thereafter is considered. No responsibility will attach to the Procurement Official or his or her representative for the premature opening of a bid not properly addressed and identified. The Procurement Official will not consider telegraphic, electronic, or facsimile bids/modifications, unless specifically authorized in the solicitation.
14. **BID OPENING** – The Procurement Officer or designee will open all bids received in response to an Invitation for Bid (IFB) at the date, time and place specified, read publicly, and made available for inspection.
15. **BIDDER INTERESTED IN MORE THAN ONE BID** – The Procurement Officer or designee will reject multiple bids, if more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons. A party who has quoted prices on work, materials, or supplies to a Bidder is not thereby disqualified from quoting prices to other Bidders or firms submitting a bid directly for the work, materials or supplies.
16. **TIE-BIDS** – If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Procurement Official is authorized to award the Contract to the resident to the Town tie Bidder whose firm has its principal place of business in the Town, or if there are none, to the resident of Virginia tie Bidder, or if there are none, to one of the tie Bidders by drawing lots in public; or the Procurement Official may purchase the goods or services in the open market except

that the price paid shall not exceed the lowest Contract bid price submitted for the same goods or services. The decision of the Town to make award to one or more such Bidders is final.

17. APPEAL OF DENIAL OF WITHDRAWAL OF BID –

a. A decision denying withdrawal of a bid submitted by a Bidder is final and conclusive unless the Bidder appeals the decision within the (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The Bidder may not institute legal action until all statutory requirements have been met.

b. If no bid bond was posted, a Bidder refused withdrawal of bid under the provisions of the Purchasing Regulations, prior to appealing, shall deliver to the Town a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. The release of such security will occur only upon a final determination that the Bidder was entitled to withdraw the bid.

c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

18. APPEAL OF DETERMINATION OF NONRESPONSIBILITY –

a. Any Bidder who, despite being the apparent low Bidder, is determined not to be a responsible Bidder for a particular Town Contract shall be notified in writing by the Procurement Official. Such notice shall state the basis for the determination, which shall be final unless the Bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The Bidder may not institute legal action until all statutory requirements have been met.

b. If, upon appeal, it is determined that the decision of the Procurement Official was arbitrary or capricious and the award for the particular Town Contract in question has not been made, the sole relief available to the Bidder shall be a finding that the Bidders a responsible Bidder for the Town Contract in question. Where the award has been made and performance has begun, the Town may declare the Contract void upon a finding that this action is in the best interest of the public. Where a Contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

19. PROTEST OF AWARD OR DECISION TO AWARD –

a. Any Bidder or Offeror may protest the award or decision to award a Contract by submitting a protest in writing to the Procurement Official, or an official designated by the Town, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential Bidder or Offeror on a Contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such Contract shall submit such protest in the same manner no later than ten (10) days after posting or publication of the notice of such Contract. However, if the protest of any actual or potential Bidder or Offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such Bidder or Offeror or at such later time. No protest shall lie for a claim that the selected Bidder or Offeror is not a responsible Bidder or Offeror. The written protest shall include the basis for the protest and

the relief sought. The Procurement Official shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the Bidder or Offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.

b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Procurement Official shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a Contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the Contract may be declared void by the Town. Where the award has been made and performance has begun, the Procurement Official may declare the Contract void upon a finding that this action is in the best interest of the Town. Where a Contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the Contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

c. Pending final determination of a protest or appeal, the validity of a Contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

d. An award need not be delayed for the period allowed a Bidder or Offeror to protest, but in the event of a timely protest, no further action to award the Contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

20. LEGAL ACTION – No Bidder, Offeror, potential Bidder or Offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

21. PRICE REDUCTION – If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the Contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this Contract for the duration of the Contract period (or until the price is further reduced). Such price reduction shall become effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., that was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, is not considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the Contract documents. The Contractor in addition will, within ten days of any general price reduction, notify the Procurement Official of such reduction by letter. **FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT.** Upon receipt of any such notice of a general price reduction, the Procurement Official will duly notify all ordering offices.

The Contractor, if requested, shall furnish, within ten (10) days after the end of the Contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price reductions were made, that as provided above, they were reported to the Procurement Official within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were

made, the statement furnished by the Contractor shall include, with respect to each price reduction, (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Procurement Official was notified of any such reduction.

GENERAL TERMS and CONDITIONS

- 22. CHANGES, ADDITIONS, DELETIONS** - No changes, additions, deletions or substitutions of specifications, terms and conditions, quantity, unit of issue, delivery date, delivery charges, or price will be permitted without the prior written approval from the Purchasing Office of the Town of Herndon.
- 23. CONTRACTUAL DISPUTES** - Contractual claims, whether for money or other relief, shall be submitted to the Procurement Official in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file a claim for compensation above that required by the contract shall be given at the time of occurrence or beginning of work upon which the claim is based. If such notice is not given, any claim for additional compensation or time extension arising from or related to such occurrence or work shall conclusively be deemed waived. The Contractor shall continue performance during the pendency of any claim or dispute and following any decision thereon. The Procurement Official shall render a final decision on any such claim within sixty (60) days of its submission or within one hundred twenty (120) days after final payment, whichever is later. Failure by the Procurement Official to render a decision shall be deemed a denial of the claim as of the latest date a response was required.
- 24. QUOTATIONS TO BE F.O.B. – DESTINATION** - Quote F.O.B. DESTINATION for all competitive sealed bids. If otherwise, show exact cost to deliver.
- 25. PRICING ERRORS** - In case of an error in price extension, the firm fixed unit price shall govern.
- 26. TAX EXEMPTION** - The Town of Herndon is exempt from State Sales Tax and Federal Excise Tax. DO NOT INCLUDE TAX. Tax Exemption Certificate shall be furnished by Town of Herndon upon request. The Town's Federal Tax I.D. number is 54-6001349.
- 27. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR** - The Town does not guarantee any minimum or maximum quantities. Quantities as specified are approximate and are prepared for the solicitation. The exact quantities are as stated at time of order placement.
- 28. SAMPLES** - Samples if required, must be furnished free of expense to the Town of Herndon on or before date specified; if not destroyed in examination, they will be returned to Bidder, if requested, at his expense. Each sample must be marked with Bidder's name and address, Town's request number and opening date.
- 29. DELIVERY** - Bids must show number of days required to place material in using agency's receiving area under normal conditions. Failure to state delivery time obligates Bidder to complete delivery within 14 calendar days. A five (5) day difference in delivery promise may break a tie bid. Proposals must show the number of working days required to complete the service. This information should be stated even though a delivery date/schedule is contained in the solicitation. Unrealistically short or long delivery promised may cause bid to be disregarded. Consistent failure to meet delivery promises without valid reason shall constitute default and may cause removal from bid list. Delivery shall be made during normal working hours, Monday through Friday 8:30am - 5:00pm, unless otherwise specified in the solicitation or prior approval for another time period has been obtained.

30. **CONDITION OF ITEMS** - All items bid/offered shall be new, current model year, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated in solicitation. The Town does not recognize verbal agreements in support of this requirement.
31. **SUBSTITUTIONS** - Substitutions or cancellations are **not** permitted without **prior written approval** from the Town of Herndon Purchasing Office.
32. **TOWN RIGHTS** - The Town reserves the right to accept or reject all or any part of bids/proposals, waive minor technicalities/informalities and award the contract to the lowest responsible bidder or most qualified and best suited Offeror to best serve the interest of the Town.
33. **ANTI-TRUST** - By entering into a contract, the Bidder/Offeror conveys, sells, assigns, and transfers to the Town of Herndon all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Herndon under said contract.

Consistent and continued tie bidding could cause rejection of bids by the Procurement Officer or designee and/or investigation for Anti-Trust violations.

34. **INDEMNIFICATION** - The Contractor agrees to indemnify, defend and hold harmless the Town of Herndon, Virginia, its officers, agents, and employees from any claim, damages and action of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.

The vendor agrees to protect the Town from claims involving infringement of patent or copyrights.

35. **PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING** - No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded, or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
36. **CONTRACT DOCUMENTS** - The Contract entered into by the parties shall consist of those documents as listed on the cover sheet of this document.
37. **MULTIPLE AWARDS** - The Town reserves the right to award multiple contracts for all of the specified item(s) or service(s) to more than a single responsive and responsible bidder. The Town may, also, award multiple contracts to the lowest responsive and responsible bidder for each required good, service or equipment.
38. **METHOD OF PAYMENT** - For all transactions not made through a Town authorized credit card (purchase-card, p-card), the Town will provide an authorized purchase order. Upon satisfactory delivery of the merchandise and/or satisfactory completion of the services, the Contractor shall submit all invoices and statements with the referenced/associated purchase order number included to:

**TOWN OF HERNDON
ACCOUNTS PAYABLE
P.O. BOX 427
HERNDON, VA 20172-0427**

The prices and payments shall serve as full compensation for the labor, tools, equipment, transportation, overhead and all other incidentals necessary to complete the specified terms and conditions.

39. PAYMENT -

a. The Contractor shall submit invoices for items ordered, delivered and accepted directly to the payment address shown above or on the purchase order.

b. Any payment terms requiring payment in less than 30 days is regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

c. The Contractor shall bill all goods or services provided under this contract or purchase order at the contract price, regardless of which Town Department is being billed.

d. Unreasonable Charges. It may become difficult to determine final job costs, accurately, at the time orders are placed under certain emergency procurements and for most time and material purchases. In such cases, contractors are placed on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. The Town will research and challenge charges that appear as unreasonable, and will hold that portion of the invoice in abeyance until a settlement is reached. Upon determining that invoiced charges are not reasonable, the Town shall promptly notify the contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement is not reached within thirty (30) days of notification. The provisions of this section do not relieve the Town of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

40. PAYMENT DATE - The payment due date is established as forty-five days after receipt by the local government or its agent responsible under the contract for approval of such invoices for the amount of payment due, or thirty days after receipt of the goods or services, whichever is later.

Failure to pay by the payment date shall cause the Town to pay any finance charges assessed by the business concern that **do not exceed one percent (1%) per month.**

The Contractor can find further information regarding payment date and prompt payment by localities in subsections 2.2-4352 Code of Virginia (1950), as amended.

41. ANTI-DISCRIMINATION - By submitting their bids/proposals all Bidders/Offerors certify to the Town of Herndon that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act 1975, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act.

In every contract over \$10,000.00 the provision in 1 and 2 shall apply:

1. During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.
 - (b) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to the purpose of meeting the requirements of this section.
2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

42. INSURANCE - Whenever any work and/or services are provided, either in or on Town owned property, the following shall apply:

- a. The Contractor shall provide the Procurement Official with a Commonwealth of Virginia Certificate of Insurance PRIOR to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. The minimum limits of liability shall be:

1. Workers' Compensation--Standard Virginia Workers' Compensation Policy.

2. Broad Form Comprehensive General Liability--\$1,000,000 per occurrence coverage to include:

Premises - Operations; Products/Completed Operations; Contractual; Independent Contractors; Owners and Contractors Protective; Personal Injury (Libel, Slander, Defamation of Character, etc.);

3. Automotive Liability--\$1,000,000.00 per occurrence.

4. Professional Liability/Errors and Omissions

5. Profession/Services:	Limits
Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractor	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner	\$1,750,000 per occurrence, \$3,000,000 aggregate
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate

Surveying

\$1,000,000 per occurrence, \$1,000,000 aggregate

- b. The Town reserves the right to require higher limits on any Contracts provided notice of such requirement is stated in the solicitation. The Town is to be named as an additional or co-insured. A thirty- (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the Procurement Official at the address indicated on the solicitation.
 - c. Contractor's signature of the solicitation constitutes his/her certification that, if awarded the Contract, he/she shall obtain the required coverage as specified above and proof of coverage as contained herein shall be submitted within ten (10) calendar days after notice of award. The Contractor's signature also signifies that this coverage shall be maintained for the duration of the Contract. "Claims made" policies must be in force or that coverage purchased for three (3) years after Contract completion date
43. **APPLICABLE LAWS AND COURTS** - Any Town contract is governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall be responsible for compliance with all the laws of the Commonwealth of Virginia, all ordinances and regulations of the Town of Herndon and such other standards, codes, and regulations having application to the work involved. The Contractor shall be responsible for securing all approvals and permits including occupancy and paying all charges bearing on the design and construction of a project. All permits shall be filed in the name of the Town of Herndon and shall be coordinated through the Director of Public Works.
44. **DEFAULT** - In case of failure to deliver goods and/or services in accordance with the contract terms and conditions, the Town of Herndon, after due written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy is in addition to any other remedies which the Town of Herndon may have.
45. **ASSIGNMENT OF CONTRACT** - Neither party shall assign contract without the **prior written** consent of the other party nor shall any contract be entered into or assigned to any party that is debarred from doing business with or in the Commonwealth of Virginia.
46. **VALID CONTRACT** - In order to validate any contract document entered into with the Town of Herndon, an authorized person as defined by the Town's Procurement Ordinance and Regulations shall execute it.
47. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH** - A Contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
48. **IMMIGRATION REFORM AND CONTROL ACT OF 1986** - By entering into a written contract with the Town of Herndon, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth,

knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

49. **DEBARMENT STATUS** - By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia or the Town of Herndon from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia or the Town of Herndon.
50. **PRECEDENCE OF TERMS** - The following General Terms and Conditions, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
51. **QUALIFICATIONS OF (BIDDERS/OFFERORS)** - The Town of Herndon may make such reasonable investigations as deemed proper and necessary to determine the ability of the (Bidders/Offerors) to perform the services/furnish the goods and the (Bidder/Offeror) shall furnish to the Town all such information and data for this purpose as is requested. The Town reserves the right to inspect (Bidder's/Offeror's) physical facilities prior to award to satisfy questions regarding the (Bidder's/Offeror's) capabilities. The Town further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (Bidder/Offeror) fails to satisfy the Town that such (Bidder/Offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
52. **TESTING AND INSPECTION** - The Town reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
53. **AVAILABILITY OF FUNDS** - It is understood and agreed between the parties herein that the Town shall be bound hereunder only to the extent of the funds available or that may hereafter become available for the purpose of this agreement.
54. **BID PRICE CURRENCY** - Unless stated otherwise in the solicitation, Bidders/Offerors shall state bid/offer prices in US dollars.
55. **DRUG-FREE WORKPLACE** - During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
56. **TAX EXEMPTION** – The Town is exempt from the payment of any federal excise or any Virginia sales tax. The Bidder must submit bid with net pricing, exclusive of taxes. However,

when under established trade practice any federal excise tax is included in the list price, a Bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, that is deducted by the Federal Excise Tax Exemption Number is **54-6001349**. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the Town at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction Contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

57. **DEBARMENT STATUS** – By submitting their bids, Bidders certify that they are not currently debarred from submitting bids on Contracts by the Town, nor are they an agent of any person or entity that is currently debarred from submitting bids on Contracts by the Town or any agency, public entity/locality or authority of the Commonwealth of Virginia.
58. **ETHICS IN PUBLIC CONTRACTING** – The provisions contained in Sections 2.24367 through 2.2-4377 of the Virginia Public Procurement Act, as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited or entered into by the Town. By submitting their bids/proposals, all Bidders/Offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
59. **NO CONTACT POLICY** – No Bidder shall initiate or otherwise have contact related to the solicitation with any Town representative or employee, other than the Purchasing Department, after the date and time established for receipt of bids. Any contact initiated by a Bidder with any Town representative, other than the Purchasing Department, concerning this solicitation is prohibited and may cause the disqualification of the Bidder from this procurement process.
60. **ADDENDA** – The Town will issue all addenda via Town Procurement webpage or EVA Commonwealth of Virginia webpage. All such addenda shall become a part of the solicitation documents, must be addressed in the bid/offer and shall become a Contract Document. The Town accepts no liability for late or non-receipt of addenda.
61. **CRIMINAL SANCTIONS** – The provisions referenced in Ethics in Public Contracting supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interest Act (§ 2.1-639.1 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the facts that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
62. **TERMINATION OF CONTRACTS** – Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
 - a. Terminated prior to expiration date by satisfactory deliveries of entire Contract requirements, or upon termination by the Town for Convenience or Cause.
 - b. Extended upon written authorization of the Procurement Official and accepted by Contractor,

to permit ordering of unordered balances or additional quantities at Contract prices and in accordance with Contract terms.

- 63. TERMINATION FOR CONVENIENCE** – A Contract may be terminated in whole or in part by the Town in accordance with this clause whenever the Procurement Official shall determine that such a termination is in the best interest of the Town. Any such termination shall be effected by delivery to the Contractor at least thirty (30) days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the Contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.
- 64. TERMINATION OF CONTRACT FOR CAUSE** –
- a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the Town shall thereupon have the right to terminate, specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall, at the option of the Town, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.
- b. Notwithstanding the above, the Contractor shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of Contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the Town from the Contractor is determined.
- 65. TERMINATION DUE TO UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL YEARS** - If funds are not appropriated or otherwise made available to support continuation of the performance of this Contract in a subsequent fiscal year, then the Town shall cancel the Contract and, to the extent permitted by law, the Town shall reimburse the Contractor for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract.
- 66. IMMIGRATION REFORM AND CONTROL ACT OF 1986** - By entering into a written contract with the Town of Herndon, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- 67. VIRGINIA FREEDOM OF INFORMATION ACT** – All proceedings, records, Contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

b. Any competitive sealed bidding Bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Town decides not to accept any of the bids and to reopen the Contract. Otherwise, bid records shall be open to public inspection only after award of the Contract. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the Town decides not to accept any of the proposals and to reopen the Contract. Otherwise, proposal records shall be open to the public inspection only after award of the Contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

c. Trade secrets or proprietary information submitted by a Bidder, Offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the Bidder or Offeror will submit proprietary information under separate cover. Offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. Bidders shall not mark sections of their bid as proprietary if they are to be part of the award of the Contract and are of a "Material" nature. The Town reserves the right to submit such information to its Town Attorney for concurrence of the Offeror's claim that it is in fact proprietary. References may be made within the body of the proposal to the proprietary information; however, all information contained within the body of the proposal shall be "public information" in accordance with State statutes.

d. Nothing contained in this section shall be construed to require the Town, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the Town.

- 68. MODIFICATION OF CONTRACT** – the Procurement Official may upon agreement with the Contractor, issue a written modification to the Contract within the general scope thereof, during performance. However, no fixed-price Contract may be increased over the life of the Contract by amounts totaling more than twenty percent (20%) of the amount of the Contract or thirty thousand dollars (\$30,000) whichever is LESS without the advance written approval of the Town Council. In no event may an increase in the amount of any contract occur for any purpose without adequate consideration. Relief of a Bidder/Offeror from the consequences of an error in its bid/Offeror is prohibited without adequate consideration. Should it become proper or necessary in the execution of this Contract to make any change in design or to make any alterations that will increase the expense, the Procurement Official shall determine an equitable adjustment. The Town will make no payment to the Contractor for any extra material or services, or of any greater amount of money than stipulated as compensation in the Contract, unless some changes in or additions to the Contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by Contract amendment or otherwise furnished by the Procurement Official.

SPECIAL TERMS and CONDITIONS

- 69. NEGOTIATION WITH LOWEST BIDDER** - Unless all bids are cancelled or rejected, the Town reserves the right granted by § 2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the

agency whenever such low bid exceeds the department's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds that were budgeted by the department for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications proposed for performance under the contract. The procurement agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the department wishes to negotiate a lower contract price. Both parties shall agree on the times, places, and manner of negotiating by the department and the lowest responsive, responsible bidder.

70. **OMISSIONS & DISCREPANCIES** – Any items or parts of any equipment listed in this solicitation that are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. Should a Bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Procurement Official at least five (5) days prior to the date set for the opening of bids. If necessary, the Procurement Official will send a written addendum for clarification to all Bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five (5) days of the date set for opening of bids.
71. **PROHIBITION AGAINST UNIFORM PRICING** – The Procurement Official shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a bid each Bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other Bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating Bidders. Any disclosure to or acquisition by a competitive Bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.
72. **LICENSE REQUIREMENT** – All firms doing business in the Town of Herndon are required to be licensed in accordance with the Town's "Business, Professional and Occupational Licensing (BPOL) Tax" Ordinance and the BPOL license number must be indicated on the bid/proposal form. Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Questions concerning the BPOL tax should be directed to the Finance Department, Revenue Office, telephone number (703) 435-6813.
73. **CONTRACTOR'S LICENSE REQUIREMENT** – As required under Title 54, Code of Virginia (1950) a Contract for construction, removal, repair or improvement of a building or other real property that exceeds one thousand (\$1,000.00) shall furnish the following:

Licensed Class A Virginia Contractor # _____ Specialty
_____ or

Licensed Class B Virginia Contractor # _____ Specialty
_____ or

Licensed Class C Virginia Contractor # _____ Specialty

SPECIFICATIONS

- 74. QUESTIONS CONCERNING SPECIFICATIONS** – Any information relative to interpretation of specifications and drawings shall be requested of the Procurement Official, in writing, in ample time before the opening of bids. Inquiries, if received by the Procurement Official within ten (10) days of the date set for the opening of bids, are not given any consideration. Any material interpretation of a specification, as determined by the Procurement Official, will be expressed in the form of an addendum to the specification which will be sent to all prospective Bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.
- 75. FORMAL SPECIFICATIONS** – When a solicitation contains a specification which states no substitutes, no deviation there from, is permitted and the Bidder is required to furnish articles in conformity with that specification. The Bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship is in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., is construed as to the minimum requirements of these specifications.

AWARD

- 76. AWARD OR REJECTION OF BIDS** – The Procurement Official shall award the Contract to the lowest responsive and responsible Bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the Town to accept it. The Procurement Official reserves the right to award a Contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the Town. Award may be made to as many Bidders as deemed necessary to fulfill the anticipated requirements of the Town. The Procurement Official also reserves the right to reject the bid of a Bidder deemed to be a non-responsible Bidder. In determining the responsibility of a Bidder, the following criteria will be considered: shall have recorded the reasons in the Contract file.
- a. The ability, capacity and skill of the Bidder to perform the Contract or provide the service required;
 - b. Whether the Bidder can perform the Contract or provide the service promptly, or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgment, experience and efficiency of the Bidder;
 - d. The quality of performance of previous Contracts or services;
 - e. The previous and existing compliance by the Bidder with laws and ordinances relating to the Contract or services;
 - f. The sufficiency of the financial resources and ability of the Bidder to perform the Contract or provide the service;

- g. The quality, availability and adaptability of the goods or services to the particular use required;
- h. The ability of the Bidder to provide future maintenance and service for the use of the subject of the Contract;
- i. The number and scope of the conditions attached to the bid;
- j. Whether the Bidder is in arrears to the Town on debt or Contract or is a defaulter on surety to the Town or whether the Bidder's Town taxes or assessments are delinquent; and
- k. Such other information as may be secured by the Procurement Official having a bearing on the decision to award the Contract. If an apparent low Bidder is not awarded a Contract for reasons of non responsibility, the Procurement Official shall to notify that Bidder and shall have recorded the reasons in the Contract file.

- 77. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS** – All award notices are issued by the Town to the successful Bidder and award notices are posted on the Town Procurement webpage. Updates such as procurement opportunities, addendum, short listed firms for RFP, notices of awards, etc are promptly posted to the webpage.

The following documents that are included in the solicitation are incorporated by reference in the resulting Contract and become a part of said Contract:

- a. Authority of Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable,
- b. General Conditions and Instructions to Bidders,
- c. Special Provisions and Specifications
- d. Pricing Schedule,
- e. Any addenda/amendments/Memoranda of Negotiations

- 78. GUARANTEES & WARRANTIES** – The Contractor shall furnish all required guarantees and warranties and shall deliver them to the Contract Administrator before final payment on the Contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

- 79. ADDITIONS/DELETIONS** – The Town reserves the right to add similar items/services or delete items/services specified in the resultant Contract as requirements change during the period of the Contract. The Town and the Contractor mutually agree to prices for items/services to be added to the Contract. Contract amendments will be issued for all additions or deletions.

- 80. SUBCONTRACTS:** The Contractor shall not subcontract any portion of the work without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by Town of Herndon will bind Bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

81. PAYMENT TO SUBCONTRACTORS – A Contractor awarded a Contract under this solicitation and who is authorized to subcontract any portion of the work is hereby obligated:

a. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Town for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; (or)

b. To notify the Town and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Town, except for amounts withheld as stated in b above. The date of mailing of any payment by U.S. mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Town.

82. USE OF PREMISES AND REMOVAL OF DEBRIS:

a. The Contractor shall:

(1) Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any contractor;

(2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractor; and

(3) Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.

b. The Contractor expressly undertakes, either directly or through his subcontractor(s), to effect all cutting, filling, or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the owner, not to cut or otherwise alter the work of any other contractor. The Contractor shall not damage or endanger any portion of the work or premises, including existing improvements, unless called for by the contract.

c. The Contractor expressly undertakes, either directly or through his subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.

83. **AUDIT** – The Contractor shall retain all books, records and other documents relative to this Contract for five (5) years after final payment, or until audited of Town, whichever is sooner. The Town shall have full access to and the right to examine any of said materials during said period.
84. **USE OF CONTRACT BY OTHER POLITICAL JURISDICTIONS** – Bidders are advised that the Town will extend all resultant Contracts, with the authorization of the Bidder, to the Metropolitan Washington Council of Governments jurisdictions and other jurisdictions and political subdivisions of the Commonwealth of Virginia to permit their ordering of supplies and/or services at the prices and terms of the resulting Contract. If any other jurisdiction decides to use the final Contract, the Contractor must deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase order, contractual disputes, invoicing and payment. The Town acts only as the “Contracting Agent” for these jurisdictions and political subdivision. Failure to extend a Contract to any jurisdiction will have no effect on consideration of Contractors bid/proposal.

It is the awarded vendor’s responsibility to notify the jurisdictions and political subdivision of the availability of the Contract.

Each participating jurisdiction and political subdivision has the option of executing a separate Contract with the awardee. Contracts entered into with them may contain general terms and conditions unique to those jurisdictions and political subdivisions covering minority participation, non-discrimination. If, when preparing such a Contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.

The Town assumes no liability and is shall not be held liable for any costs or damage incurred by another jurisdiction as a result of any award extended to that jurisdiction or political subdivision to the awardee.

85. **DELIVERY** – The Contractor shall ensure that the delivery of goods will occur within the number of calendar days stated below after receipt of order (ARO) by the bidder. The Town requires the Bidder to deliver within a reasonable time ARO. If the Bidder does not insert a stated delivery time in the blank below, then the Bidder is deemed to offer delivery in accordance with the Agency’s desired delivery time as stated below:

Agency’s desired delivered time: __14__ calendar days ARO

BIDDER’S/OFFEROR’S STATED DELIVERY TIME: ____ CALENDAR DAYS ARO

86. **DELIVERY AND STORAGE** - It is the responsibility of the Contractor to make all arrangements for delivery, unloading, receiving and storing materials. The Town will not assume any responsibility for receiving these shipments. Contractor shall check with the owner to determine if storage space exist and make necessary arrangements for security and storage space
87. **EXTRA CHARGES NOT ALLOWED** - The Contractor shall submit a bid price for complete installation ready for the Town’s use, and shall include all applicable freight and installation charges; extra charges are not allowed.



TOWN OF HERNDON

P.O. BOX 427
HERNDON, VA 20172
(703) 435-6800

This is not a Contract
Submit Bid on this Form

IFB #16 – 09 DOWNTOWN PLANTER BED PROGRAM

Item No.	Quantity	Description	Unit Price	Total Amount
1.	1 EACH	<p>AWARD TO BE MADE IN THE AGGREGATE. BIDDER MUST BID ALL ITEMS.</p> <p><u>SPRING PLANTING</u> as per specifications.</p> <p>*ALL PLANTING IS SUBJECT TO APPROPRIATION OF FUNDS.</p> <p>Direct all questions to Charles J. Baker, Purchasing Agent by fax or via e-mail at charles.baker@herndon-va.gov</p>	_____	\$ _____ TOTAL BID PRICE

Have all Specifications included in this Invitation for Bid been met?

[] YES [] NO (If NO, please list all exceptions in detail on Attachment B Bid/Specifications Exceptions.)

SIGNATURE _____

PRINTED NAME _____ DATE _____

****BIDDER MUST BID ON ALL ITEMS IN ORDER TO BE CONSIDERED FOR AN AWARD****

By signing this bid, bidder certifies, acknowledges, understands and agrees to be bound by the conditions set forth in the contents of the bid including the General Terms and Conditions.

ATTACHMENT A

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in the Town of Herndon must obtain a Business, Professional and Occupational License (BPOL) as required in the Municipal Code, Article VII and local license tax authorized, Code of Virginia, § 58.1-3700 et seq.

In order for the Department of Tax Administration to determine BPOL requirement prior to contract award, it is necessary to provide the following information:

- If you currently have a Town of Herndon business license, please submit a copy with your bid/proposal.
- Do you have an office in:
Virginia ☐ yes ☐ no
Town of Herndon ☐ yes ☐ no
- Date business began/will begin work in the Town of Herndon

Provide a description of the business activity that will take place in the Town of Herndon:

Authorized Signature

Date

Please return this form and a copy of current Town of Herndon business license in bid/proposal. Contract award may not be made if omitted.

ATTACHMENT B

REFERENCES

QUALIFICATIONS OF BIDDER: Bidder must have the capability and capacity in all respects to fully satisfy the contractual requirements.

Indicate the length of time you have been in business providing this type of service and/or product.

_____years, _____months

Provide a list of at least three (3) similar accounts, that your firm has provided similar goods and/or services to in the past twelve (12) months.

1. Company Name: _____
 Contact: _____
 Phone Number: _____
 Job Dates: _____ Beginning: _____ End: _____

2. Company Name: _____
 Contact: _____
 Phone Number: _____
 Job Dates: _____ Beginning: _____ End: _____

3. Company Name: _____
 Contact: _____
 Phone Number: _____
 Job Dates: _____ Beginning: _____ End: _____

ATTACHMENT C
TOWN OF HERNDON

Contractor Certification, Agreement, and Affidavit
As to Eligibility for Employment in the United States

Affidavit

This _____ day of _____ 20__ appeared before me, a notary public for the jurisdiction identified _____ below, _____ the _____ of _____ (Contractor) who after being duly sworn made oath as follows:

1. This instrument supplements and is part of the contract between the Town of Herndon, Virginia (Town) and _____ Contractor (contract).
2. The consideration to support this instrument is the same consideration that supports the contract.
3. Contractor certifies that it does not and will not during the performance of this contract violate (i) the provisions of the Federal Immigration Reform and Control Act of 1986, as amended, and §40.1-11.1, Code of Virginia, which prohibit the employment of aliens not legally eligible for employment in the United States, and (ii) the provisions of Federal and State employment and wage hour laws. To carry out and support a major element of the above certification, the Contractor certifies to the Town that all Contractors' employees and all employees of each of Contractor's subcontractors working on the subject of this contract are legally eligible for employment in the United States.
4. As to each such employee the federal I-9 employment eligibility verification process, or federal Employment Eligibility Verification (E-Verify) Program, or both, has been undergone.
5. Contractor agrees to update this assurance for new employees and to be audited by the Town for compliance with the contractual provision identified as in 3(i) above. During this audit, Contractor shall provide Town access to any public documentation that relates to verifying the employees' legal eligibility for employment in the United States and that relates to employees of the Contractor or of any subcontractor working on the subject of this contract, in cases where the Town harbors a reasonable suspicion that such employee(s) may be not legally eligible for employment in the United States. The documentation will indicate that the federal I-9 employment eligibility verification process or the federal Employment Eligibility Verification (E-Verify) Program or both as to each such employee has been undergone. The Contractor shall not produce documentation in this regard that is explicitly prohibited by federal or Virginia law from public disclosure.

6. The Contractor shall include and enforce the language in this paragraph in every subcontract issued under this contract and shall require the subcontractor to do the same.

[Contractor]

Name: _____

By: _____

Title: _____

Commonwealth of Virginia:

County of Fairfax:

Subscribed, sworn to, and acknowledged this _____ day of _____ 20____, by
_____ the _____ of
_____ [Contractor], a
_____ [here put type of entity], on behalf of this entity.

Notary Public

My commission expires: _____

Notary registration number: _____

Please return this executed form with bid or proposal. Contract award will not be considered if omitted.

ATTACHMENT D
State Corporation Commission Form

State Corporation Commission Form Virginia State Corporation Commission (SCC) registration information.

The bidder:

_____ is a corporation or other business entity with the following SCC identification number:

-OR-

_____ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust

-OR-

_____ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location)

-OR-

_____ is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check in the following space if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver): _____

ATTACHMENT E
Town of Herndon
Landscape Beds

Elden Street (front of town hall)

4 beds @ 35 foot length (See Planter Bed Design: PB 1)

<u>Species</u>	<u>Size</u>	<u>Quantity</u>
Pasture Rose	#3	8
Blue False Indigo	#1	24
Tickseed Sunflower	#1	80
Dense Blazing Star	#1	24
Wild Pink	#1	32
Switch Grass	#3	24

Lynn Street (Elden-Station)

3 beds @ 20 foot length (See Planter Bed Design: PB 4)

Woodland Sunflower	#1	8
Dwarfed Crested Iris	#1	36
Wild Blue Phlox	#1	30
Wild Pink	#1	30
Zig Zag Goldenrod	#1	18
Switchgrass	#3	12

TPI Building (Elden-Station)

4 beds: 2@22 and 2@25 feet length (See Planter Bed Design: PB 1)

22 foot length

Blue False Indigo	#1	12
Tickseed Sunflower	#1	20
Dense Blazing Star	#1	12
Wild Pink	#1	16
Switchgrass	#3	8

25 foot length

Pasture Rose	#3	4
Blue False Indigo	#1	8
Tickseed Sunflower	#1	20
Dense Blazing Star	#1	12
Wild Pink	#1	16
Switchgrass	#3	8

Station Street (parking lot)

2 beds @ 25 foot length-no irrigation (See Planter Bed Design: PB 2)

New Jersey Tea	#3	6
Moss Phlox	#1	60
Scaly Blazing Star	#1	12
Purple Love Grass	#1	8
Little Bluestem	#3	8

Lynn Street (between Station and Center-east side)

50 foot bed (Cushman) (See Planter Bed Design: PB 1)

Pasture Rose	#3	8
Blue False Indigo	#1	12
Tickseed Sunflower	#1	26

Dense Blazing Star	#1	12
Wild Pink	#1	12
Switchgrass	#3	4
<u>35 foot bed (See Planter Bed Design: PB 1)</u>		
Pasture Rose	#3	3
Blue False Indigo	#1	6
Tickseed Sunflower	#1	20
Dense Blazing Star	#1	6
Wild Pink	#1	8
Switchgrass	#3	4
<u>45 foot bed (See Planter Bed Design: PB 1)</u>		
Pasture Rose	#3	5
Blue False Indigo	#1	6
Tickseed Sunflower	#1	20
Dense Blazing Star	#1	6
Wild Pink	#1	8
Switchgrass	#3	4
<u>30 foot bed (See Planter Bed Design: PB 1)</u>		
Pasture Rose	#3	3
Blue False Indigo	#1	4
Tickseed Sunflower	#1	20
Dense Blazing Star	#1	6
Wild Pink	#1	8
Switchgrass	#3	4
<u>12 foot bed (See Planter Bed Design: PB 1)</u>		
Blue False Indigo	#1	4
Tickseed Sunflower	#1	12
Wild Pink	#1	8
Switchgrass	#3	4
<u>Lynn Street (between Station and Center- west side)</u>		
<u>10 foot bed-no irrigation (See Planter Bed Design: PB 2)</u>		
New Jersey Tea	#3	2
Moss Phlox	#1	10
Scaly Blazing Star	#1	6
Purple Love Grass	#1	6
<u>15 foot bed-no irrigation (See Planter Bed Design: PB 2)</u>		
New Jersey Tea	#3	2
Moss Phlox	#1	16
Scaly Blazing Star	#1	10
Purple Love Grass	#1	6
<u>2-30 foot beds (See Planter Bed Design: PB 3)</u>		
Smooth Hydrangea	#3	6
‘Incrediball’		
Wintergreen	#1	16
Virginia Bluebell	#1	32
Wild Pink	#1	56
Switchgrass	#3	4

2-40 foot beds (See Planter Bed Design: PB 3)

Ruby Spice Ninebark	#3	4
Smooth Hydrangea	#3	6
‘Incrediball’		
Wintergreen	#1	16
Virginia Bluebell	#1	32
Wild Pink	#1	56
Switchgrass	#3	4

10 foot bed (See Planter Bed Design: PB 3)

Wintergreen	#1	8
Virginia Bluebell	#1	8
Wild Pink	#1	24
Switchgrass	#3	2

Center Street (between Station and Library)**2-25 foot beds (See Planter Bed Design: PB 1)**

Pasture Rose	#3	6
Tickseed Sunflower	#1	40
Dense Blazing Star	#1	12
Wild Pink	#1	16
Switchgrass	#1	8

8 foot bed (See Planter Bed Design: PB 1)

Tickseed Sunflower	#1	8
Dense Blazing Star	#1	6
Wild Pink	#1	8
Switchgrass	#3	2

2-35 foot beds (front of library) (See Planter Bed Design: PB 3)

Ruby Spice Ninebark	#3	4
Smooth Hydrangea	#3	6
‘Incrediball’		
Wintergreen	#1	16
Virginia Bluebell	#1	16
Wild Pink	#1	32
Switchgrass	#3	4

4-12 foot beds (front of library) (See Planter Bed Design: PB 3)

Wintergreen	#1	32
Virginia Bluebell	#1	32
Wild Pink	#1	48
Switchgrass	#3	8

Center Street (between Station and library- north side)**10 foot bed (See Planter Bed Design: PB 1)**

Dense Blazing Star	#1	6
Wild Pink	#1	8
Switchgrass	#3	2

35 foot bed (See Planter Bed Design: PB 1)

Pasture Rose	#3	3
Blue False Indigo	#1	6
Tickseed Sunflower	#1	20
Dense Blazing Star	#1	6
Wild Pink	#1	8
Switchgrass	#3	4

Center Street (between Station and Lynn-north side)

80 foot bed-no irrigation (See Planter Bed Design: PB 3)

Ruby Spice Ninebark	#3	5
Smooth Hydrangea	#3	7
‘Incrediball’		
Wintergreen	#1	8
Virginia Bluebell	#1	32
Wild Pink	#1	42
Switchgrass	#3	4
<u>40 foot bed (See Planter Bed Design: PB 3)</u>		
Ruby Spice Ninebark	#3	2
Smooth Hydrangea	#3	3
‘Incrediball’		
Wintergreen	#1	8
Virginia Bluebell	#1	16
Wild Pink	#1	8
Switchgrass	#3	2

Old Town Hall Bed (See Planter Bed Design: Old Town Hall Bed)

Little Gem Norway Spruce	#3	3
Blue False Indigo	#1	12
Tickseed Sunflower	#1	67
Dense Blazing Star	#1	30
Wild Pink	#1	77
Purple Love Grass	#1	6
Switchgrass	#3	11

Council Chamber Bed (See Planter Bed Design: Council Chambers Bed)

Little Gem Norway Spruce	#3	9
Tickseed Sunflower	#1	16
Moss Phlox	#1	100
Dense Blazing Star	#1	16
Purple Love Grass	#1	9

Library Tiered Bed (See Planter Bed Design: Library Tiered Bed)

Ruby Spice Ninebark	#3	14
Smooth Hydrangea	#3	24
‘Incrediball’		
Woodland Sunflower	#1	48
Virginia Bluebell	#1	186
Wild Pink	#1	77
Switchgrass	#3	9
Bottlebrush Grass	#3	27
Little Bluestem	#3	33

ATTACHMENT F
Downtown Overall Landscape Schedule

Place All Plants in Containers

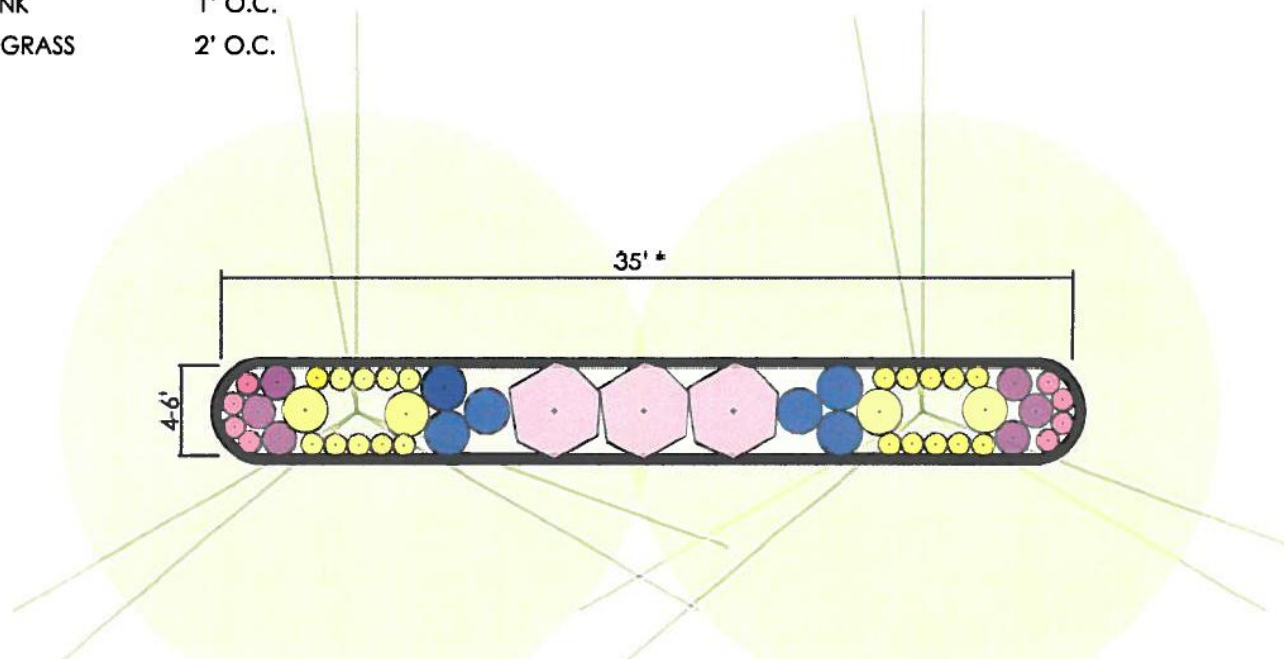
<u>Specie</u>	<u>Size</u>	<u>Quantity</u>
New Jersey Tea (Ceanothus americanus)	#3	10
Moss Pink (Phlox subulata)	#1	186
Scaly Blazing Star (Liatris squarrosa)	#1	28
Purple Love Grass (Eragrotis spectabilis)	#1	35
Little Blue Stem (Schizachyrium scoparium)	#3	41
Pasture Rose (Rosa carolina)	#3	40
Blue False Indigo (Baptisia australis)	#1	94
Tickseed Sunflower (Bidens aristosa)	#1	369
Dense Blazing Star (Liatris spicata)	#1	154
Wild Pink (Silene caroliniana)	#1	598
Switchgrass (Panicum vigatum)	#3	136
Woodland Sunflower (Helianthus divaricata)	#1	56
Dwarf Crested Iris (Iris cristata)	#1	36
Zig Zag Goldenrod (Solidago flexicaulis)	#1	18
Wild Blue Phlox (Phlox divaricata)	#1	30
Little Gem Norway Spruce (Picea abies 'Little Gem')	#3	12
Virginia Bluebell (Mertensia virginica)	#1	354
Bottlebrush Grass (Elymus hystrix)	#3	27
Smooth Hydrangea 'Incrediball' (Hydrangea arborescens 'Abetwo')	#3	52

<u>Specie</u>	<u>Size</u>	<u>Quantity</u>
Rubyspice Ninebark (Physocarpus opulifolius 'Rubyspice')	#3	29
Wintergreen (Gaultheria procumbens)	#1	104

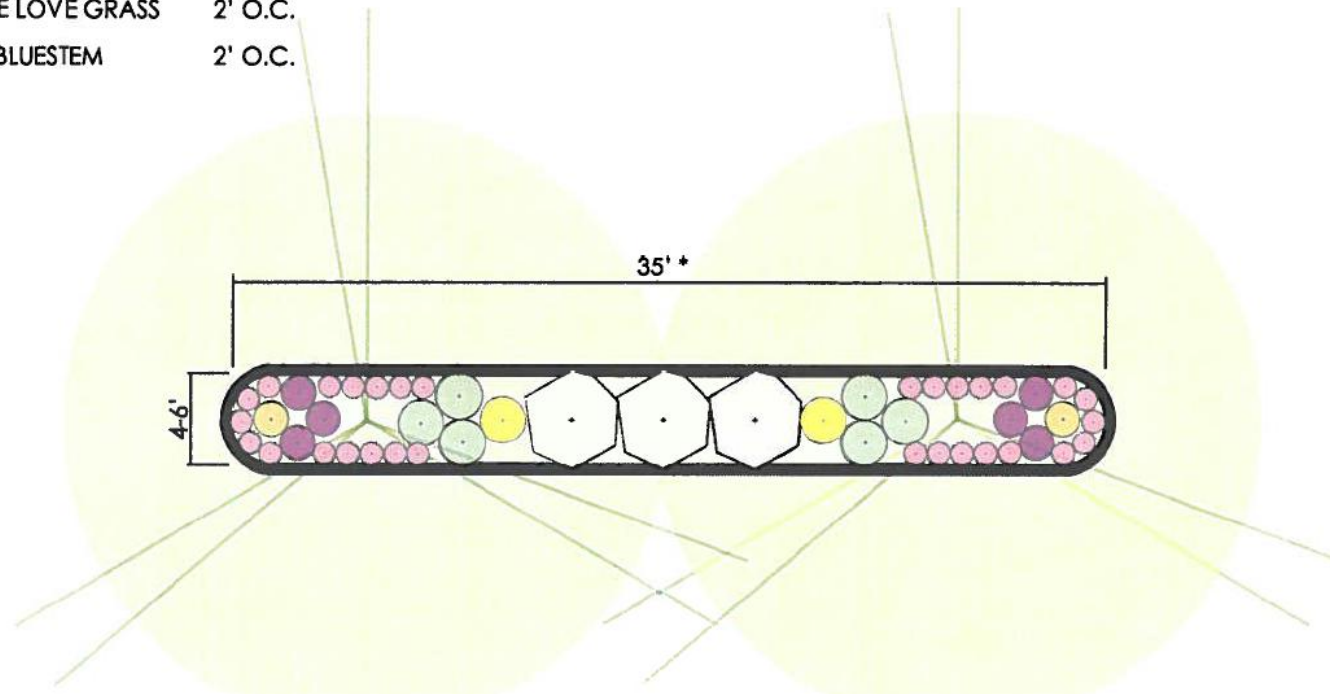
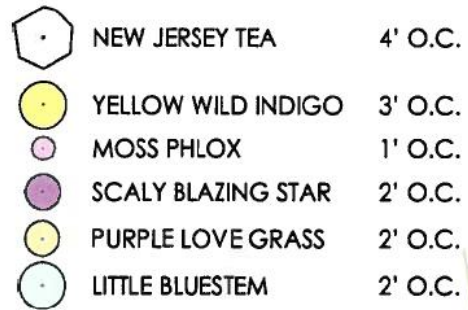
ATTACHMENT G

PLANTER BED DESIGN

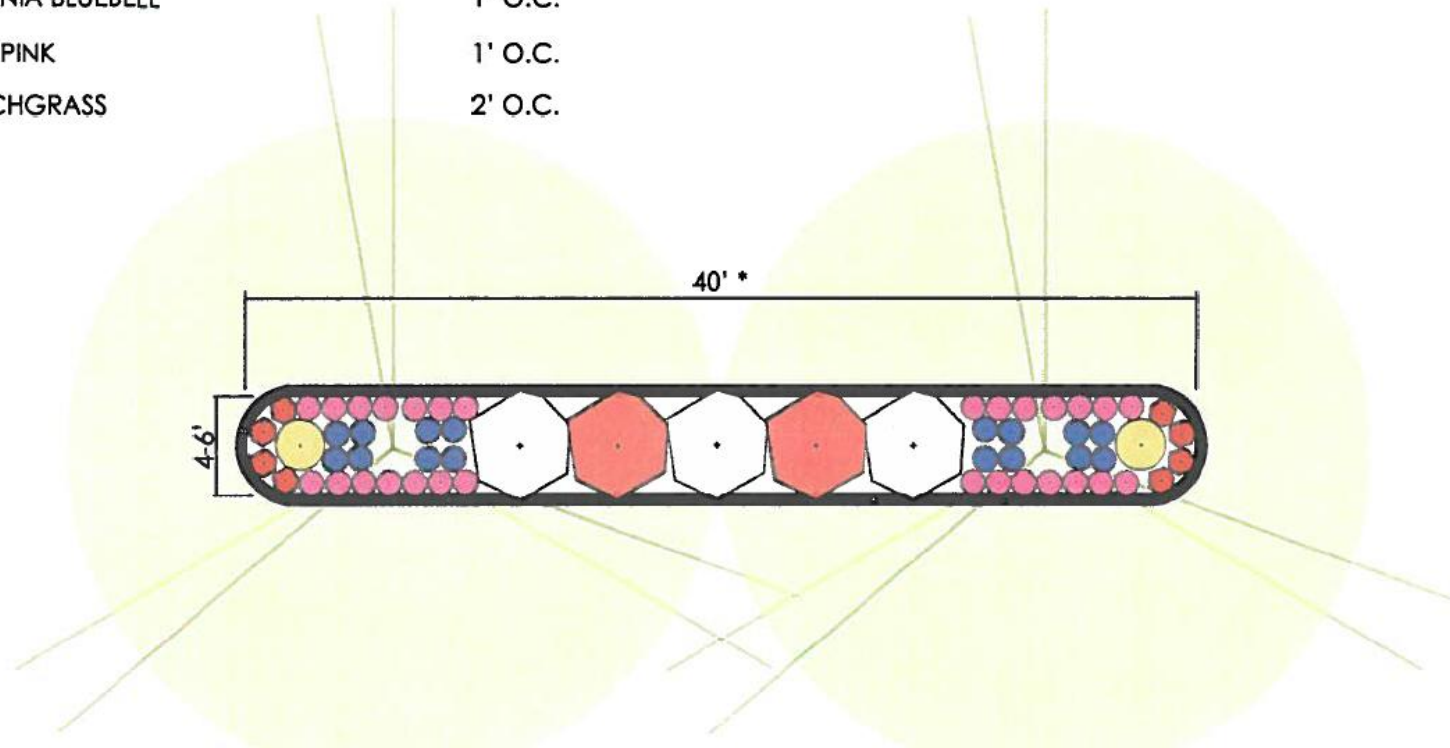
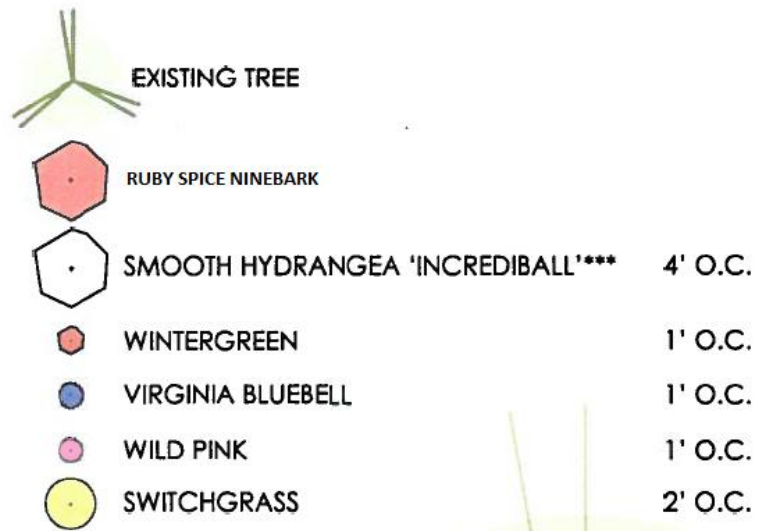
PB1



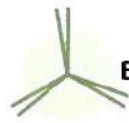
PB2



PB 3



PB4



EXISTING TREE



WOODLAND SUNFLOWER

2' O.C.



DWARF CRESTED IRIS

1' O.C.



WILD BLUE PHLOX

1' O.C.



WILD PINK

1' O.C.



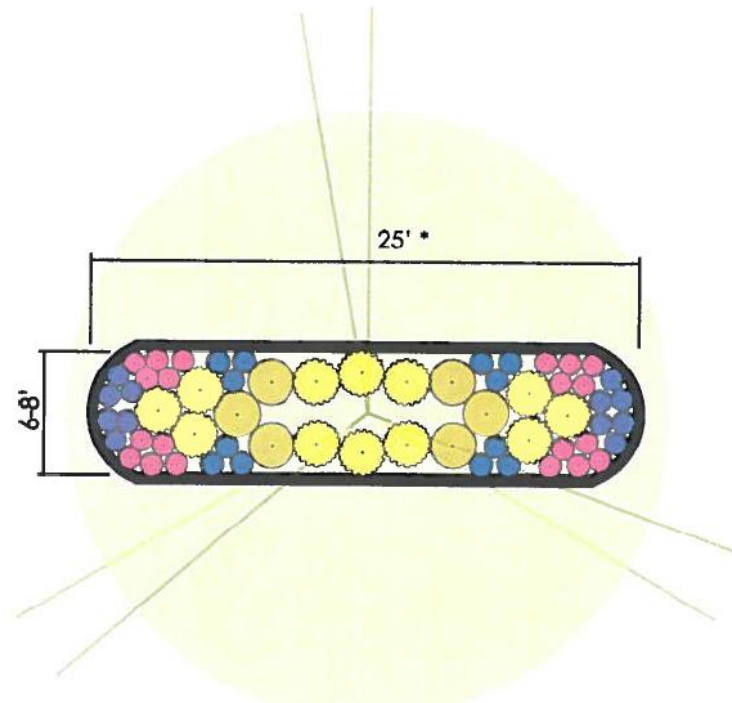
ZIGZAG GOLDENROD

2' O.C.



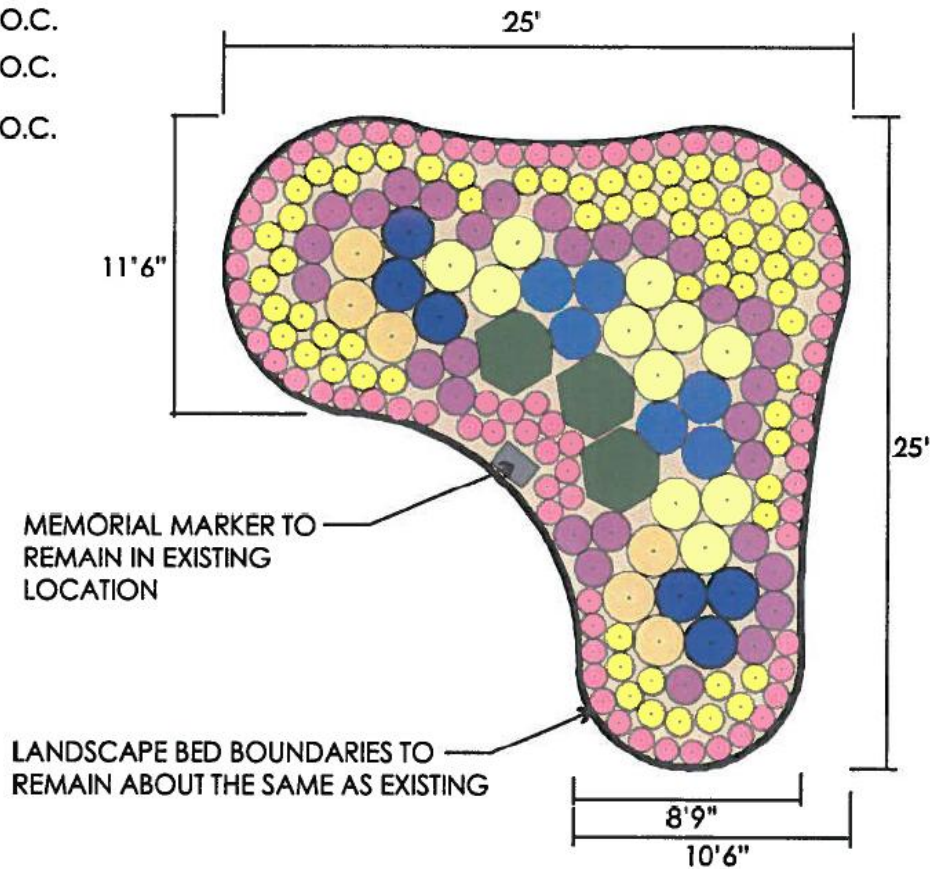
SWITCHGRASS

2' O.C.



OLD TOWN HALL

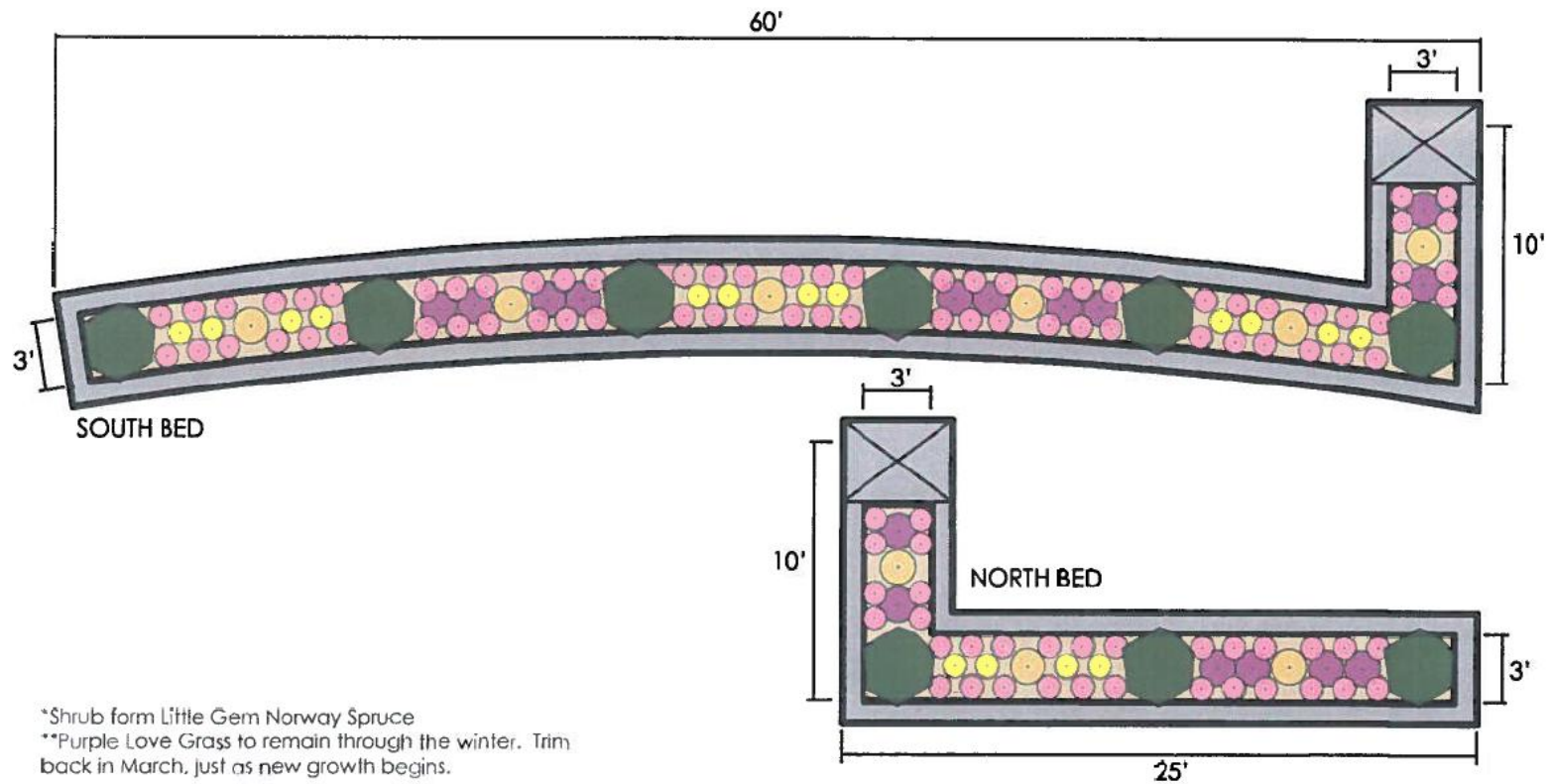
3		LITTLE GEM NORWAY SPRUCE*	3' O.C.
12		BLUE FALSE INDIGO	3' O.C.
67		TICKSEED SUNFLOWER	18" O.C.
30		DENSE BLAZING STAR	2' O.C.
77		WILD PINK	1' O.C.
6		PURPLE LOVE GRASS**	2' O.C.
11		SWITCHGRASS**	2' O.C.
		EXISTING MEMORIAL MARKER	



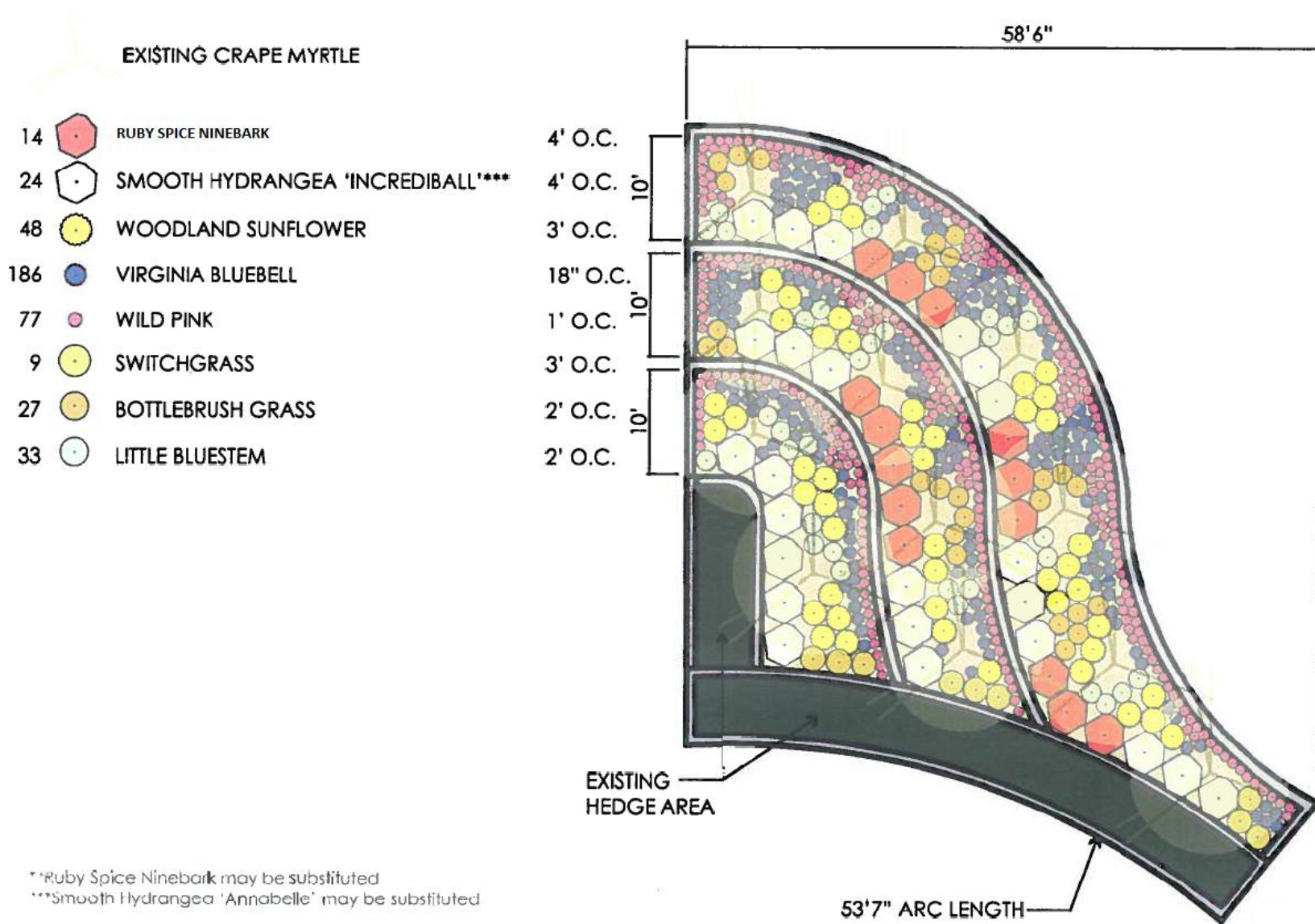
*Shrub form Little Gem Norway Spruce
 **Grasses to remain through the winter. Trim back in March, just as new growth begins.

COUNCIL CHAMBERS BED

QTY.			
9		LITTLE GEM NORWAY SPRUCE*	SPACE AS SHOWN
16		TICKSEED SUNFLOWER	SPACE AS SHOWN
100		MOSS PHLOX	SPACE AS SHOWN
16		DENSE BLAZING STAR	SPACE AS SHOWN
9		PURPLE LOVE GRASS**	SPACE AS SHOWN



LIBRARY BED



TYPICAL PLAN – HOW TO ADJUST PLANTING BASED ON BED LENGTH



EXISTING TREE

	WOODLAND SUNFLOWER	2' O.C.
	DWARF CRESTED IRIS	1' O.C.
	WILD BLUE PHLOX	1' O.C.
	WILD PINK	1' O.C.
	ZIGZAG GOLDENROD	2' O.C.
	SWITCHGRASS	2' O.C.

- As beds fluctuate in length, plants will be eliminated from the typical design. To be consistent, locate the center of the bed and remove the plants that fall in the difference of the length of the bed. Also, plants may be shifted to infill in a similar pattern to the typical based on where the tree is

Example: A 20' sun and irrigated bed needs to be planted.

Typical length [35'] – Bed that needs to be planted length [20']

=

Planted area to be removed [15']

Planted area to be removed [15']/2 = Offset from center of planter [7.5']

The 7.5' offset would include all the Pastue ose shrubs and one plant of Blue Flag indigo on either side. See the "Before" and "After" below.

